No. 115240

IN THE

SUPREME COURT OF ILLINOIS

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| MALCOLM WEEMS, etc. et al., Movants, vs. APPELLATE COURT, FIFTH DISTRICT, AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 31, Respondents. | ) | Supervisory Order |

ORDER

This cause coming to be heard on the motion of the movants, Malcolm Weems et al.,an objection having been filed by the respondent, American Federation of State, County and Municipal Employees, Council 31, and the Court being fully advised in the premises;

IT IS ORDERED that the motion for supervisory order is allowed. In the exercise of this Court's supervisory authority, the Appellate Court, Fifth District, is directed to enter an order in American Federation of State County and Municipal Employees, Council 31 v. Malcom Weems et al., No. 5-12-0468, remanding the case to the Circuit Court of Alexander County with directions to dissolve the preliminary injunction entered on October 10, 2012, in American Federation of State County and Municipal Employees, Council 31 v. Weems et al., Alexander County No. 12 MR 43.

Order entered by the Court.

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SUPREME COURT CLERK

JUSTICE THEIS, concurring in part and dissenting in part:

I agree with the majority that the appellants' motion for direct appeal should be denied as moot. I disagree with the majority that this court should enter a supervisory order directing the appellate court to remand the appellant's appeal to the trial court with directions to dissolve the October 10, 2012, preliminary injunction.

Such an order would represent an unwarranted extension of our supervisory authority. Under the Illinois Constitution of 1970, this court has supervisory authority over all lower courts in the state. Ill. Const. 1970, art. VI, §16. This plenary power is broad, but its use has traditionally been narrow, limited to cases where "the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice or intervention is necessary to keep an inferior tribunal from acting beyond the scope of its authority." *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d 510, 513 (2001); *City of Urbana v. Andrew N.B.*, 211 Ill. 2d 456, 470 (2004) (stating that this court's supervisory authority extends to the adjudication and application of the law and the procedural administration of the courts). While the underlying dispute between the parties involves important issues, we are too removed from that dispute, and from the facts as they exist today, to dissolve the preliminary injunction.

On August 31, 2012, the arbitrator issued a final decision and award, which barred the appellants from proceeding with the plan to close various facilities "until the parties have a reasonable opportunity to conclude negotiations" on the appellee's grievances within 30 days. During September, the parties met. On October 10, 2012, the Alexander County circuit court issued a preliminary injunction in aid of arbitration, directing the parties "to continue the processing of the health and safety grievance and the arbitration of the dispute contained in those grievances." On

October 27, 2012, the arbitrator entered a final decision and award, denying the grievances.

On October 29, 2012, the parties were busy. Before the Alexander County circuit court, the appellee filed a motion for leave to file a verified third amended complaint for injunctive relief, challenging the arbitrator's decision. Meanwhile, before the Cook County circuit court, the appellant filed a verified complaint to confirm the arbitrator's decision. The appellee's motion was granted. So currently, the parties are before four different courts across the State: this court on the appellants' motion for direct appeal and motion for supervisory order, the Fifth District of the Appellate Court on the appellants' appeal of the preliminary injunction, the Alexander County circuit court on the appellee's complaint for injunctive relief from the arbitrator's decision, and the Cook County circuit court on the appellant's complaint to confirm that decision.

In their motion for supervisory order, the appellants note that, by virtue of their appeal of the preliminary injunction, the Alexander County circuit court cannot modify or dissolve it. This seems correct, but the legal landscape has changed considerably since that court issued that injunction. Clearly, this case is far from over. There are arguments to be made regarding both the preliminary injunction and the arbitrator's decision, and those arguments would be best made before the trial court.

In my view, we should not remand the appellants' appeal and direct the trial court to dissolve the preliminary injunction based on an unconfirmed arbitration award. Rather, we should simply remand the appellants' appeal to facilitate resolution of this dispute by allowing the trial court to manage the case based on the facts as they stand now. Once there, the parties may raise any new issues, including those related to the preliminary injunction.

JUSTICE BURKE joins in this partial concurrence and partial dissent.

CHIEF JUSTICE KILBRIDE, dissenting:

I do not agree with the majority's decision to enter a supervisory order instructing the appellate court to remand this matter to the circuit court with directions to dissolve the preliminary injunction in the underlying proceedings. Accordingly, I respectfully dissent.

It is settled that this court disfavors supervisory orders outside of our leave-to-appeal docket and, thus, will grant supervisory orders in only limited circumstances. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 212 (2009); *Burnette v. Terrell*, 232 Ill. 522, 545 (2009); *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 220-21 (2008); *Delgado v. Board of Election Commissioners of City of Chicago*, 224 Ill. 2d 481, 488-89 (2007). Consequently, "[a]s a general rule, we will not issue a supervisory order unless the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice or intervention is necessary to keep an inferior tribunal from acting beyond the scope of its authority." *Bryant v. Board of Election Commissioners of City of Chicago*, 224 Ill. 473, 479 (2007) (quoting *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d 510, 513 (2001)). Neither of these factors are present in this case, making supervisory relief improper.

Moreover, as the movants themselves contend in their emergency motion seeking a supervisory order, the contested preliminary injunction in this case "presents issues of great constitutional concern." Specifically, the movants allege that the matter involves issues including

(1) the proper separation of powers among the three branches of government; (2) the extent of the Governor's power to reduce and eliminate appropriations; and (3) the State's power to control its finances. In the context of these constitutional questions, the matter also implicates the proper interpretation of the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2010), the Illinois Labor Dispute Act (820 ILCS 5/1 *et seq.* (West 2010), and the State Lawsuit Immunity Act (745 ILCS 5/1 *et seq.* (West 2010). By awarding the movants with supervisory relief dissolving the preliminary injunction, the majority has effectively resolved all of these important issues in favor of the movants *without* the benefit of arguments by the parties or a record developed to resolve the issues. I strongly disagree with the majority's decision to resolve these important contested issues in this fashion.

In addition, as the objectors note, the movants' request for relief in a supervisory order seeking dissolution of the preliminary injunction is essentially a request for this court to confirm the arbitration award. Simply put, this is *not* the typical method of review of an arbitration award. To the contrary, under controlling statutory provisions, review of an arbitration award involving construction of a collective-bargaining agreement must initially be brought in the circuit court. See 5 ILCS 315/8, 16 (West 2010); 710 ILCS 5/17 (West 2010). Ultimately, then, the circuit court has primary and original responsibility for either confirming or vacating a challenged arbitration award. That process here, however, has not occurred. Indeed, the majority's decision effectively circumvents

that normal process.

Consequently, in my opinion, the parties, this court, and the interests of justice would be better served by denying the request for supervisory relief and letting the parties raise their respective arguments in the lower courts. As this court has recognized, " '[i]n our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party representation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.' " *People v. Givens*, 237 Ill. 2d 311, 323 (2010) (quoting *Greenlaw v. United States*, 554 U.S. 237 (2008)). Here, I believe that this court should permit the parties to frame the important constitutional issues recognized by the movants and argue those issues as they see fit. Notably, no lower court has ever considered those issues. Similarly, the parties should also be permitted to argue the propriety of the arbitration award as an initial matter in the circuit court, the typical manner of review of an arbitration award. Absent a properly developed record and arguments from the respective parties on these important issues, I do not believe the majority's decision to circumvent the ordinary litigation process with a supervisory order is prudent.

Alternatively, even if I were to agree that a supervisory order is proper in this case, I could not join in the majority's decision to direct the circuit court to dissolve the preliminary injunction. Generally, the decision of whether a preliminary injunction should be dissolved is a matter that

should be reserved to the trial court's discretion, with the benefit of arguments from the parties. See *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 698 (2010) ("Whether to dissolve a preliminary injunction is within the trial court's discretion."). Thus, if a supervisory order is appropriate here, we should simply remand the matter to the circuit court with instructions permitting the parties themselves to argue whether the injunction should be dissolved. After considering those arguments, the circuit court can render its decision and the parties can seek normal appellate review of that decision if they so desire. Accordingly, for these reasons, I dissent from the majority's decision to provide the movants with relief in a supervisory order that directs the trial court to dissolve the preliminary injunction.